

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 139 OF 1994

Dy. Director of Social Forestry,
Division Jalna,
Social Forestry Division, Jalna.

..Petitioner

VERSUS

Ramesh Yadav Tupe, died, L.Rs.:-

(A) Smt. Vimalbai Ramesh Tupe
Age 39 years, Occ. household.

(B) Ramdas Ramesh Tupe
Age 26 years, Occ. Service

(C) Sou. Anita Kailas Pawar
Age 26 years, Occ. Service

(D) Sou. Meena Ashok Bhalerao
Age 20 years, Occ. Service

(E) Ravi Ramesh Tupe
Age 18 years, Occ. Service

All R/o Talegaon, Taluka
Bhokardan, Dist. Jalna.

..Respondents

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Advocate for Petitioner : Shri S.V. Warad
Advocate for Respondent : Shri A.S.Shelke
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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 01, 2015
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ORAL JUDGMENT :-

1. This petition was admitted by order dated 14.1.1994.
2. The petitioner is Deputy Director of Social Forestry. *An ex parte*

award dated 9.9.1993, solely relying upon an affidavit, without any reason, has been delivered by the Labour Court in Reference (IDA) No. 136 of 1989, which is impugned in this petition. Since, I have considered the subsequent events that have occurred during the pendency of this petition till the respondent workman passed away on 15.3.2011, I am not adverting to all the contentions of the litigating sides in the light of the order that I propose to pass.

3. The respondent was engaged as an unskilled labourer on 1.3.1985. He was terminated on 1.9.1988. Reference IDA No. 136 of 1989 was preferred by him, which resulted in an ex parte award dated 9.9.1993, allowing the reference.

4. The respondent was reinstated by the end of 1993 and was given work whenever available till he passed away on 15.3.2011.

5. This Court admitted this petition and stayed the award in terms of prayer clause (C) by order dated 14.1.1994. Yet the respondent was continued in employment and he completed 240 days uninterrupted service in a calendar year for the first time in 2001, according to the chart submitted by the petitioner today, which has been taken on record and marked as Exhibit "X" for identification.

6. The petitioner has deposited Rs.54,000/- as backwages in this Court. By order dated 1.9.2008 in Civil Application No.4619 of 2008, the

respondent has withdrawn Rs.25,000/-. The remaining amount, with interest, is still with this Court. Last drawn wages of the deceased respondent were at the rate of Rs.14/- per day.

7. I have considered the strenuous submissions of the petitioner that the impugned award deserves to be quashed and set aside. I have also considered the submissions of the respondent that the impugned award calls for no interference.

8. I find from the impugned award that there are no reasons and no discussion about the contentions of the parties. The framing of issues, reasons and the operative part of the award are in a half page order. The same reads as under:-

“4. The issue for determination is as under with my finding thereon.

<u>Sr. No.</u>	<u>Issue</u>	<u>Finding</u>
1.	Whether the IInd part is entitled for relief sought ?	Yes.

REASONS

5. The IInd party employee has filed his affidavit as an ex parte evidence. The evidence of the IInd party goes unchallenged. In view of unchallenged testimony of the IInd party I answered the issue No.1 as positive. Hence, I pass the following order:-

ORDER

1. *The reference is allowed.*
2. *The 1st party is directed to reinstate the 11nd party employee in service with continuity and backwages.*
3. *The copy of Award is sent to the Dy. Commissioner of Labour, Aurangabad.”*

9. It is apparent that the Labour Court has virtually declined to apply its mind to this case. It has allowed the reference only by the cryptic observation as is evident from the above. It is trite law that no order or judgment can be delivered by a Court by only relying upon an affidavit as has been held in the case of Abbott Laboratories (India) Ltd. Vs. J.D.Jamdar [1995 (2) Mah.L.J.122]. Paragraph No.9 of the said judgment reads as under :-

“9. In my opinion, the Industrial Court was clearly wrong in disposing of the complaints on the basis of affidavits. The learned Judge was not right in rejecting the Company's request for leading oral evidence and in proceeding with the complaints on the basis of affidavits. In view of the foregoing discussion, the impugned orders dated October 18, 1991 passed by the learned Judge of the Industrial Court, Bombay, are set aside. The matter is remanded to the Industrial Court for disposing of the complaints in accordance with law after giving an opportunity to the parties to lead evidence.”

10. However, now that the respondent has passed away and who was continued in employment despite this Court having stayed the award, I

am not inclined to take away the benefits he had already earned. Nevertheless the award cannot be sustained.

11. In so far as gratuity is concerned, the respondent completed 240 days for the first time in the year 2000 and passed away on 15.3.2011. The petitioner shall, therefore, calculate the gratuity of the respondent on the basis of the last drawn wages in accordance with the provisions of the Gratuity Act with effect from 2001 onwards and shall make the said payment of gratuity to the widow of the respondent, namely, Vimalbai Ramesh Tupe, as expeditiously as possible and preferably within four months from today.

12. In the light of the above, this petition is partly allowed. The impugned award is modified and the respondent is permitted to withdraw the deposited amount of Rs.29,000/- with accrued interest, in lieu of reinstatement, with continuity and full back wages.

13. Rule is accordingly made partly absolute.

(RAVINDRA V. GHUGE, J.)

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akl/d